APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/720,782	11/24/2003	Mahmoud Assaf	P1454US01	4948

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GATEWAY, INC.
ATTN: PATENT ATTORNEY
610 GATEWAY DRIVE
N. SIOUX CITY, SD 57049

EXAMINER
WEI, ZHENG

ART UNIT	PAPER NUMBER
2192	

MAIL DATE	DELIVERY MODE
05/21/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Advisory Action **Before the Filing of an Appeal Brief**	10/720,782	ASSAF, MAHMOUD
	Examiner	Art Unit
	ZHENG WEI	2192

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>31 December 2007</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

      Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

     NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: <u>1-18 and 31-37</u>.

   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:

     See Continuation Sheet.

12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.

13. ☐ Other: _____.

/Tuan Q. Dam/
Supervisory Patent Examiner, Art Unit 2192

Continuation of 11. does NOT place the application in condition for allowance because:

(1) Claims 1, 7, and 13: At lines 14-15, page 10 of the arguments, the Applicant submits that "However, nothing here states or suggests that the type of operating system is saved , or that the type is saved in a data recorder". As Wang disclosed at Fig.4B, step 412, "Java program detects type of OS of local computer system" and step 414 "Java program selects JNI implementation that is appropriate for detected OS"[emphasis added]. Wang also discloses in order "To support various updates to firmware…the firmware update file provided in operation 502 can be configured to provide data for a particular Operating system type…Similarly, multiple JNI implementation can be provided for other operation system types"(col.6, lines 51-58). Therefore it is clear that said Java program has to use detected OS type to select appropriate JNI among the multiple JNI implementations for different operation system types. During the selection process of running the Java program, the detected OS type as an input parameter has to be saved in a data recorder (memory) and processed by the Java program to generate appropriate selection. Thus, the Examiner asserts that Wang does disclose all the limitation as Applicant argued for Claim 1, 7, 13 and other related claims based solely on prior reference Wang.

(2)Claims 2, 8, and 14: At lines 7-10 of page 8 of the arguments, the Applicant argues that cited limitation about determining step comparing at least one of the data time and number of bytes of a common file of the operating system. It should be noted that plain language of the claim does not specify how to compare and determine and what to compare with "the common file of the operating system (OS)", the previous version operating system or two versions before current operating system? Therefore, as the "one of the date, time or number of bytes of the common file" are well known attributes of a general file, e.g. created time, date, size of file in bytes, ownership…, while Stevens disclosing the similar method of determining operating system type by reading/parsing/analyzing specific files, it would also have been obvious to one having ordinary skill in the art at the time the invention was made to read/parse and further determine the OS type by using the well known file attributes including "one of the date, time and number of bytes of a common file of the operating system". Thus, Claims 2, 8, and 14 are unpatentable over Wang in view of Stevens.

(3)Claim 37: From line 11 to the bottom line of page 9, the Applicant submits that "the rejection has not shown that the Wang system has diagnostic information to save, much less diagnostic information 'for the device'". However, it should be noted claim 37 merely cited "diagnostic information for the device stored thereon", but no further information about what the "diagnostic information" is used for and what it relates to claim 1 for optimizing device performance. Therefore, said non-related "diagnostic information" can be reasonable interpreted as general data saved on the memory/disk. Thus, such general data information/diagnostic information saves on the memory/disk is a well known feature in the computer art and is obvious.